

**Lall v. State, No. 05-21-00770-CR (Tex. App.-Dallas, Nov. 30, 2022)**

**Attorneys.** Brian Wice (appellate), Joshua Weber (trial), Kyle Steele (trial)

**Issue & Answer.** Is the extension of a traffic stop to conduct an open-air canine sniff of a vehicle justified by reasonable suspicion founded on the following factors: (1) refusal of consent to search, (2) seeming nervous, (3) coming from a place of purported drug-activity, (4) driving your car like a drug dealer would. **Yes.**

**Facts.** An officer saw the defendant wearing a fanny pack across his chest and loading things into his vehicle. The officer later stopped the defendant for having an obscured license plate. The officer removed the defendant from the vehicle and conducted a pat-down. The defendant seemed nervous during this encounter [go figure]. The officer confirmed that the defendant had no outstanding warrants and then gave him a verbal warning for the license plate. After completing all legitimate traffic-stop tasks, the officer requested consent to search the defendant's vehicle. The defendant said no. The officer continued to detain him and retrieved his canine from the back of his squad vehicle to conduct an open-air sniff around the vehicle. The canine smelled drugs, the officer discovered drugs, he arrested the defendant, and the State prosecuted him.

**Analysis.** Relying on the United States Supreme Court opinion of *Rodriguez v. U.S.*, 575 U.S. 348 (2015) the defendant contends that the officer was without justification to prolong the traffic stop in order to retrieve his canine from the vehicle and conduct an open-air sniff after he had checked the defendant for warrants and issued a verbal warning. This extends *Rodriguez* beyond its narrow holding. Here, the "mission" of the traffic stop had concluded, and the canine sniff prolonged the stop for about two minutes. The question becomes whether the officer had reasonable suspicion beyond that which justified the stop. According to the trial court, he did: the defendant was nervous, couldn't find his wallet, he had come from a location at which the officer suspected narcotic activity, he maneuvered his vehicle like a drug dealer, and he exercised his Fourth Amendment right to refuse consent to search. These facts combine for reasonable suspicion sufficient to prolong the stop for a canine open-air sniff.

**Dissenting (Pedersen, J.)**. Officer Pope testified that the stop was over when the defendant refused consent. Officer Pope testified that he had "zero indicators that drugs were in appellant's vehicle." Officer Pope told the defendant he would be free to go if the canine did not alert on the vehicle. The factors cited by the majority were either known to the officer at the point he determined the stop was over or learned by the officer after he violated the defendant's rights. The majority further errs by relying on the defendant's invocation of his Fourth Amendment right to withhold consent to search.

**Comment.** The defendant filed a petition for discretionary review, and I suspect we will learn that Justice Pedersen is correct.